

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TRUEPOSITION, INC.

Plaintiff,

vs.

LM ERICSSON TELEPHONE COMPANY  
(TELEFONAKTIEBOLAGET LM ERICSSON)

Case No. 2:11-cv-4574-RK

QUALCOMM, INC.

ALCATEL-LUCENT USA INC.

and

THIRD GENERATION PARTNERSHIP  
PROJECT A/K/A 3GPP

Defendants.

**UNCONTESTED MOTION FOR ISSUANCE OF LETTER OF REQUEST,  
APPOINTMENT OF COMMISSIONER, AND DIRECTION OF  
SUBMISSION OF HAGUE CONVENTION APPLICATION**

Alcatel-Lucent USA, Inc. ("Alcatel-Lucent") hereby respectfully moves this Court for an Order (1) issuing a Letter of Request for judicial assistance pursuant to 28 U.S.C. § 1781 and Chapter II of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, March 18, 1970, 28 U.S.T. 2555, T.I.A.S. No 7444 ("the Hague Convention"), (2) appointing a Commissioner pursuant to Article 17 of the Hague Convention, and (3) directing submission of the order and Letter of Request to the Ministère de la Justice of France, for the purpose of obtaining deposition testimony from Mr. Francois Courau. As reflected in the

accompanying declaration of Ali M. Stoeppelwerth, plaintiff TruePosition does not oppose this motion.

Pursuant to the Court's December 20 Order approving and adopting the parties' Discovery Plan (D.I. 166), and the Stipulated Order Establishing Protocol For Electronic Discovery (D.I. 175), the parties have been engaged in fact discovery. TruePosition has informed Alcatel-Lucent that it intends to take deposition testimony of Mr. Francois Courau, a resident and citizen of France, who is a former employee of an affiliate of Alcatel-Lucent.

A Letter of Request and appointment of a commissioner to supervise the deposition of Mr. Courau under Chapter II of the Hague Convention are the appropriate means to efficiently collect the relevant information. As reflected in the declaration of Ali M. Stoeppelwerth, Mr. Courau has consented to such a deposition and to the appointment of the Commissioner who will preside over his deposition. Mr. Courau is represented by the law firm of Wilmer Cutler Pickering Hale and Dorr LLP in connection with this letter of request and the deposition. A Proposed Order granting this motion and a proposed Letter of Request are attached as exhibits to the accompanying Declaration of Ali M. Stoeppelwerth in Support of Alcatel-Lucent USA Inc.'s Motion for Issuance of Letter of Request, Appointment of Commissioner, and Direction of Submission of Hague Convention Application.

WHEREFORE, Alcatel-Lucent hereby respectfully moves for an Order issuing a Letter of Request, appointing a Commissioner, and directing submission of the Order and Letter of Request to the Ministère de la Justice of France.

Dated: October 25, 2013

Respectfully submitted,

/s/ Francis P. Newell

Francis P. Newell  
Peter Michael Ryan  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, PA 19103  
(215) 665-2000

Ali M. Stoeppelwerth  
Brian M. Boynton  
Perry A. Lange  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
(202) 663-6000

Counsel for Defendant Alcatel-Lucent USA Inc.

### **CERTIFICATE OF SERVICE**

I, F Brenden Coller, hereby certify that on October 25, 2013, I caused a true and correct copy of Alcatel-Lucent USA Inc.'s Unopposed Motion for Issuance of Letter of Request, Appointment of Commissioner, and Direction of Submission of Hague Convention Application to be electronically filed pursuant to the Court's electronic court filing system, and that the filing is available for downloading and viewing from the electronic court filing system.

/s/ F Brenden Coller

F Brenden Coller

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Defendants.

Case No. 2:11-cv-4574-RK

**DECLARATION OF ALI M. STOEPPELWERTH IN SUPPORT OF  
ALCATEL-LUCENT USA INC.'S UNCONTESTED MOTION FOR  
ISSUANCE OF LETTER OF REQUEST, APPOINTMENT OF COMMISSIONER,  
AND DIRECTION OF SUBMISSION OF HAGUE CONVENTION APPLICATION**

Pursuant to 28 U.S.C. § 1746, Ali M. Stoeppelwerth declares:

1. I am admitted *pro hac vice* to the Bar of this Court, a Partner of Wilmer Cutler Pickering Hale and Dorr LLP, and counsel for defendant Alcatel-Lucent USA, Inc. ("Alcatel-Lucent") in this action.
2. I submit this Declaration in support of Defendant's Uncontested Motion for Issuance of Letter of Request, Appointment of Commissioner, and Direction of Submission of Hague Convention Application.

3. The proposed Order Granting Motion, Issuing Letter of Request, Appointing Commissioner, and Directing Submission of Hague Convention application is attached as Exhibit I.

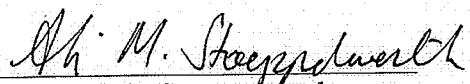
4. The proposed Request for International Judicial Assistance Pursuant to Chapter II of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters is attached as Exhibit II.

5. I have conferred via phone and email with counsel for plaintiff TruePosition who informed me that plaintiff does not oppose this motion.

6. On June 12, 2013, I spoke with Mr. Francois Courau, a former employee of an affiliate of Alcatel-Lucent. Mr. Courau has consented to the taking of his deposition and to the appointment of the Commissioner who will preside over such deposition. Mr. Courau is represented by the law firm of Wilmer Cutler Pickering Hale and Dorr LLP in connection with this letter of request and the deposition.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of October, 2013.

  
Ali M. Stoeppelwerth

## **EXHIBIT I**

**IN THE UNITED STATES DISTRICT COURT  
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TRUEPOSITION, INC.

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Case No. 2:11-cv-4574-RK

QUALCOMM, INC.

ALCATEL-LUCENT USA INC.

and

THIRD GENERATION PARTNERSHIP  
PROJECT A/K/A 3GPP

Defendants.

**[PROPOSED] ORDER GRANTING MOTION, ISSUING LETTER OF REQUEST,  
APPOINTING COMMISSIONER, AND DIRECTION SUBMISSION OF HAGUE  
CONVENTION APPLICATION**

The Court, having reviewed the papers submitted in support of Alcatel-Lucent USA Inc.'s Uncontested Motion for Issuance of Letter of Request, Appointment of Commissioner, and Direction of Submission of Hague Convention Application (the "Motion"), and having determined to issue a Request for International Judicial Assistance to authorize a commissioner in France (the "Request") pursuant to Chapter II of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention"),

**HEREBY ORDERS THAT:**

- (a) The Motion is **GRANTED**;



(b) The form of the Court's Request pursuant to the Hague Convention attached as Exhibit II to the motion is hereby issued as the Court's Request and is incorporated herein;

(c) Pursuant to Article 17 of the Hague Convention, Alexander Blumrosen (the "Commissioner") is duly appointed and is hereby appointed, pending the approval of the Ministère de la Justice of France and subject to the terms of the Court's Request, as the Commissioner to supervise the deposition testimony of Mr. Francois Courau, pursuant to Article 17 of the Hague Convention and at a time to be agreed to by the parties and Mr. Courau, and in performance of his appointment as commissioner and duties thereunder, upon completion to inform the Ministère de la Justice of France and transmit a copy of the deposition transcript and exhibits to counsel for the parties;

(d) This signed Order and the signed Request will be given to Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Alcatel-Lucent USA Inc., which will file both documents, along with French translations of both documents including Exhibit A, attached thereto, with the Ministère de la Justice, Direction des Affaires Civiles et du Sceau, Bureau de l'entraide civile et commerciale internationale (D3) 13, Place Vendôme, 75042 Paris Cedex 01, France;

(e) Defendant will bear the costs of the Hague Convention proceedings, including, without limitation, the fees of the Commissioner and the translation fees or costs, but each party will be responsible for the fees and expenses, if any, of its own attorneys relating to the Hague Convention proceedings. Defendant will use its best efforts to obtain within 2 to 3 weeks of the date of this Order, the Ministère de la Justice of France's approval of the Court's Request and appointment of the Commissioner, and;

(f) Neither this Order, nor the terms of the Court's Request (which is incorporated into this Order) shall constitute or operate as a waiver of the attorney-client privilege, the work product doctrine, or any other privileges, rights, protections, or objections that may apply to that evidence under the laws of France, or the United States. All materials withheld, in whole or in part, on the basis of any privilege shall be so identified on an appropriate log in accordance with Fed. R. Civ. P. 26(b)(5) and the Stipulated Order Establishing Protocol For Electronic Discovery.

SO ORDERED: October \_\_, 2013

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Honorable Robert F. Kelly

## **EXHIBIT II**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TRUEPOSITION, INC.

Plaintiff,

vs.

LM ERICSSON TELEPHONE COMPANY  
(TELEFONAKTIEBOLAGET LM ERICSSON)

Case No. 2:11-cv-4574-RK

QUALCOMM, INC.

ALCATEL-LUCENT USA INC.

and

THIRD GENERATION PARTNERSHIP  
PROJECT A/K/A 3GPP

Defendants.

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE PURSUANT TO  
CHAPTER II OF THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING  
OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS:  
DEPOSITION OF FRANCOIS COURAU**

A request is hereby made by the United States District Court for the Eastern District of Pennsylvania for assistance in the above-captioned action in obtaining the deposition testimony of Mr. Francois Courau, who is located in France. This request is made pursuant to Chapter II of the Hague Convention of 18 March 1970 on the Taking of Evidence in Civil or Commercial Matters (the "Hague Convention").

1. Sender

The Honorable Robert F. Kelly  
United States District Judge  
United States District Court  
Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street, Room 11613  
Philadelphia, Pennsylvania 19106  
United States of America

2. Central Authority of the Requested State      Ministère de la Justice  
Direction des Affaires Civiles et du Sceau  
Bureau de l'entraide civile et commercial  
internationale (D3)  
13, Place Vendôme  
75042 Paris Cedex 01  
France

3. Person to whom the executed request is to  
be returned      Ali M. Stoeppelwerth  
WILMER CUTLER PICKERING  
HALE and DORR LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
United States of America

This Court asks that the executed request be  
returned to Ms. Stoeppelwerth as soon as  
possible.

4. IN CONFORMITY WITH CHAPTER II, ARTICLE 17 OF THE CONVENTION, THE  
UNDERSIGNED APPLICANT HAS THE HONOR TO SUBMIT THE FOLLOWING  
REQUEST:

5(a). Requesting judicial authority      United States District Court  
Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street  
Philadelphia, Pennsylvania 19106  
United States of America

5(b). To the competent authority of      The Republic of France

6. The names and addresses of the parties to  
the proceedings and their representatives

6(a). Plaintiffs      TruePosition, Inc.  
1000 Chesterbrook Blvd., Suite 200  
Berwyn, Pennsylvania 19312  
United States of America

Represented by:

John G. Harkins, Jr.  
Colleen Healy Simpson  
HARKINS CUNNINGHAM LLP  
2800 One Commerce Square  
2005 Market Street  
Philadelphia, Pennsylvania 19103-7042  
United States of America

-and-

Douglas E. Rosenthal  
Seth D. Greenstein  
Aymeric Dumas-Eymard  
CONSTANTINE CANNON LLP  
Suite 1050 East Tower  
1301 K Street, NW  
Washington, DC 20005  
United States of America

-and-

Axel Bernabe  
Jean Kim  
CONSTANTINE CANNON LLP  
335 Madison Avenue, 9<sup>th</sup> Floor  
New York, New York 10017  
United States of America

6(b). Defendant

Alcatel-Lucent USA, Inc.  
600 Mountain Ave.  
Murray Hill, New Jersey 07974  
United States of America

Represented By:

Francis P. Newell  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, Pennsylvania 19103  
United States of America

-and-

Ali M. Stoeppelwerth  
Brian M. Boynton  
Perry A. Lange  
WILMER CUTLER PICKERING  
HALE and DORR LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
United States of America

7. The nature and the purpose of the proceedings and summary of the facts

See Exhibit A, attached hereto.

8. Evidence to be obtained

The parties seek permission to obtain the oral deposition testimony of Mr. Francois Courau.

9. Identity and address of person to be Examined

Francois Courau, Meudon, France

10. Subject matter about which the person is to be examined

Mr. Courau's knowledge of the allegations in TruePosition's Amended Complaint, his work relating to 3GPP standards-setting and, in particular, the standards-setting process for positioning technologies.

11. Documents or other property to be inspected

Documents concerning Mr. Courau's knowledge of the allegations in TruePosition's Amended Complaint, his work relating to 3GPP standards-setting and, in particular, the standards-setting process for positioning technologies.

12. The name of any of the parties, or their representatives, who plan to attend the deposition

Constantine Cannon LLP on behalf of Plaintiff TruePosition; Wilmer Cutler Pickering Hale and Dorr LLP, on behalf of defendant Alcatel-Lucent USA, Inc. and Mr. Courau (names of individual attorneys to be determined).

13. The names, address, and telephone numbers of the stenographer and interpreter who have been selected, if any

Shelle Higgins, CSR 10455, CLVS  
18, Chemin de la Croix St. Jerome  
77123 Noisy sur Ecole - France  
+33 (0)9 61 65 50 31

14. Whether the parties to the case have consented to the deposition, and if not, the reasons for any objection which has been made

The parties have consented to the deposition.

15. A suggested date for the deposition, if there is a preference

Date to be determined but no later than February 13, 2014.

16. Any requirement that the evidence is to be given on oath or affirmation, and any special form to be used

All evidence shall be given under oath in accordance with applicable procedures of French law in a form that is admissible in U.S. courts. It is requested that the testimony be taken and transcribed by a qualified court reporter and videographer chosen by TruePosition.

17. Any special methods or procedures to be followed

The Commissioner, the parties' representatives, attorneys, interpreters, and a stenographer and a videographer will be permitted to be present during the deposition; the stenographer will be permitted to record verbatim the examination; attorneys for the parties will conduct the examination and will be permitted to ask questions about the topics set forth in paragraph 10; witness examination by attorneys for the parties will be conducted orally. The parties request the transcription of the deposition be in the English language if permitted under French law.

18. Specification of privilege or duty to refuse to give evidence under the law of the State of origin

The witness may refuse to give evidence insofar as there is a privilege or duty to refuse to give evidence under the laws of the United States or the laws of France.

19. Authority appointing Commissioner, pending approval of the Ministère de la Justice

United States District Court  
Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street  
Philadelphia, Pennsylvania 19106  
United States of America



20. Commissioner

Alexander Blumrosen  
Bernard-Hertz-Béjot  
8, rue Murillo  
75008 Paris, France  
tel. (33) 1 43 18 80 80

21. The costs of the Hague Convention proceedings, including, without limitation, the fees of the Commissioner and the translation fees or costs, will be borne by

The party identified in 6(b) hereinabove, but each party will be responsible for the fees and expenses, if any, of its own attorneys relating to the Hague Convention proceedings.

Dated: October \_\_, 2013

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Hon. Robert F. Kelly

## EXHIBIT A

### THE NATURE AND THE PURPOSE OF THE PROCEEDINGS AND SUMMARY OF THE FACTS

*TruePosition, Inc. v. Ericsson Telephone Co., et al.*, Case No. 2:11-cv-4574-RK

1. This is a civil antitrust action being actively litigated in the United States District Court for the Eastern District of Pennsylvania before Judge Robert F. Kelly. Plaintiff TruePosition, Inc. sells products and services based on its mobile positioning technology used, *e.g.*, to locate mobile communications devices that call public safety emergency services. Defendant Alcatel-Lucent USA, Inc. is a subsidiary of Alcatel Lucent, which manufactures and sells, among other things, Radio Access Network (RAN) equipment to wireless operators (*e.g.*, companies that operate cellular phone networks). Originally, Alcatel Lucent was named as a defendant, but the parties subsequently agreed to substitute Alcatel-Lucent USA, Inc. for Alcatel Lucent as the Alcatel Lucent entity named in the complaint.

2. TruePosition alleges that Alcatel Lucent conspired in violation of the U.S. Sherman Act with Qualcomm Inc. and LM Ericsson Telephone Co. ("Ericsson"), and the Third Generation Partnership Project ("3GPP"), a standard-setting organization to exclude TruePosition's mobile positioning technology from the Long Term Evolution (LTE) wireless standard being developed by 3GPP. LTE is a standard for high-speed wireless networks for mobile devices including smart phones and tablets.

3. Alcatel Lucent and Ericsson sell RAN equipment for LTE networks, and Qualcomm sells chipsets for mobile devices that allow LTE functionality. Alcatel Lucent, Ericsson, Qualcomm, and TruePosition all participate in the 3GPP standard-setting process, along with many other companies. TruePosition contends that the defendants prefer an

alternative positioning technology to TruePosition's technology and that they conspired to include that positioning technology in the LTE standard while they have blocked or delayed inclusion of TruePosition's positioning technology. TruePosition contends that its technology is superior to the positioning technology that defendants allegedly prefer, but that being excluded from the LTE standard will prevent its technology from being adopted by wireless operators and other customers, causing TruePosition to lose sales. Alcatel Lucent and the other defendants deny TruePosition's allegations.

4. In 2011, Alcatel Lucent and the other defendants filed motions to dismiss TruePosition's complaint. In January 2012, the District Court granted the motions to dismiss, but granted TruePosition leave to amend its complaint. In February 2012, TruePosition filed its Amended Complaint, which continues to assert a conspiracy claim under Section 1 of the Sherman Act.

5. In March 2012, defendants, including Alcatel-Lucent USA, Inc., filed renewed motions to dismiss the Amended Complaint. In August 2012, the District Court denied defendants' motions to dismiss. In October 2012, Alcatel-Lucent USA, Inc. answered the complaint. The District Court entered a discovery order on December 20, 2012, and discovery is proceeding. Discovery is presently scheduled to conclude in February 2014.